

# Land Development & Transportation Committee Staff Report

November 9, 2017



<b>Case No:</b>	17DEVPLAN1173
<b>Project Name:</b>	Tire Discounters
<b>Location:</b>	13200 Shelbyville Road
<b>Owner(s):</b>	SDI Real Estate, LLC
<b>Applicant:</b>	Thompson Thrift Development, LLC
<b>Representative(s):</b>	Bardenwerper, Talbot & Roberts, PLLC
<b>Project Area/Size:</b>	.876 acres
<b>Jurisdiction:</b>	Middletown
<b>Council District:</b>	19 – Julie Denton
<b>Case Manager:</b>	Laura Mattingly, AICP, Planner II

## REQUEST(S)

- **Waiver of 10.2.10** to decrease the 10' vehicle use area Landscape Buffer Area adjacent to Park Place Drive to 5'
- **Waiver of 10.2.12** to allow interior landscape buffer areas to be less than 290 SF
- **Waiver of 10.3.6** to allow the vehicle maneuvering area to encroach into the required 25' scenic corridor buffer
- **Revised Detailed District Development Plan** with binding element modifications

## CASE SUMMARY

This proposal is for an 8,250 square foot automobile repair garage, located on the south side of Shelbyville Road, approximately a half mile west of I-265. The garage will be accessed from Park Place Drive, a private access easement off Shelbyville Road. There will be cross access with the property to the east. This site was formerly a drive-in restaurant.

## Previous Cases

9-12-90: A rezoning from R-4, Single Family Residential to C-2, Commercial. Planning Commission recommended approval to the City of Middletown on June 7, 1990. A revised detailed district development plan was approved on April 23, 1998 by LD&T for a Sonic Restaurant.

## STAFF FINDING

The revised detailed district development plan appears to meet the standard of review based on staff analysis in the staff report. The proposed land use is compatible with surrounding commercial uses and the proposal is utilizing much of the existing site layout which maintains the existing character of the area. With the exception of the requested waivers, which appears adequately justified, the proposal meets the requirements of the Land Development Code.

## TECHNICAL REVIEW

- Preliminary approvals have been received from MSD staff.
- Transportation staff approval is pending the approval of a right-of-way dedication waiver.

## **INTERESTED PARTY COMMENTS**

Staff received one letter in opposition due to the saturation of similar auto-related properties in the area and concerns over the impact on property values.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER** of Section 10.2.10 to decrease the 10' vehicle use area Landscape Buffer Area adjacent to Park Place Drive to 5'

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as landscaping and screening will be provided in the remaining 5 foot of buffer area which will meet the intent of the Vehicle Use Area buffer.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. These guidelines are not violated, as landscaping will be provided in the remaining 5 feet of buffer along Park Place Drive meeting the intent of Cornerstone 2020.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the site is narrow and much of the width of the site is needed for the proposed building and drive aisles.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as the required vehicle maneuvering width and building size could not be achieved.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER** of Section 10.2.12 to allow interior landscape buffer areas to be less than 290 SF

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the total required square footage of interior landscape area is achieved.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of-way. These guidelines are not violated, as the total required area of interior landscaping areas is provided and each ILA will be planted accordingly, meeting the intent of Cornerstone 2020.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the proposal provides the maximum possible square footage for each Interior Landscape Area while also provided the desired parking for the use.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as the desired amount of parking could not be provided.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER** of Section 10.3.6 to allow the vehicle maneuvering area to encroach into the required 25' scenic corridor buffer

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as there will still be a large landscape area provided that will be planted as required.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate

when appropriate. Guideline 3, Policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 7 calls for protection of the character of parkways and scenic byways and corridors through standards for buffers, landscape treatment, lighting and signs. The intent of parkway development standards is to protect existing scenic and aesthetic qualities, to ensure a quality visual experience on developing corridors and to protect and improve the visual experience on established corridors. These guidelines are not violated, as the applicant will provide all required plantings that will screen the vehicle use area from Shelbyville Road and protect the scenic quality of the corridor.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the access and vehicle use area is existing and similar to other nearby uses.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant, as the existing pavement would have to be removed and the site plan significantly changed.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP**

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The site does not appear to contain any steep slopes, hydric soils, or historic resources and is already developed, so very little tree canopy exists. The applicant will plant the required tree canopy.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community have been provided as access and parking facilities are provided. Pedestrian connections to public sidewalks have been provided to the main entrance of the auto dealership, as well as bike parking facilities.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: There is no open space requirement for this proposal.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the future development in the area, as this area is commercial in nature and much of the existing layout is remaining the same.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan generally conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**REQUIRED ACTIONS**

**Recommend to the City of Middletown the APPROVAL or DENIAL of:**

- **Waiver of 10.2.10** to decrease the 10' vehicle use area Landscape Buffer Area adjacent to Park Place Drive to 5'
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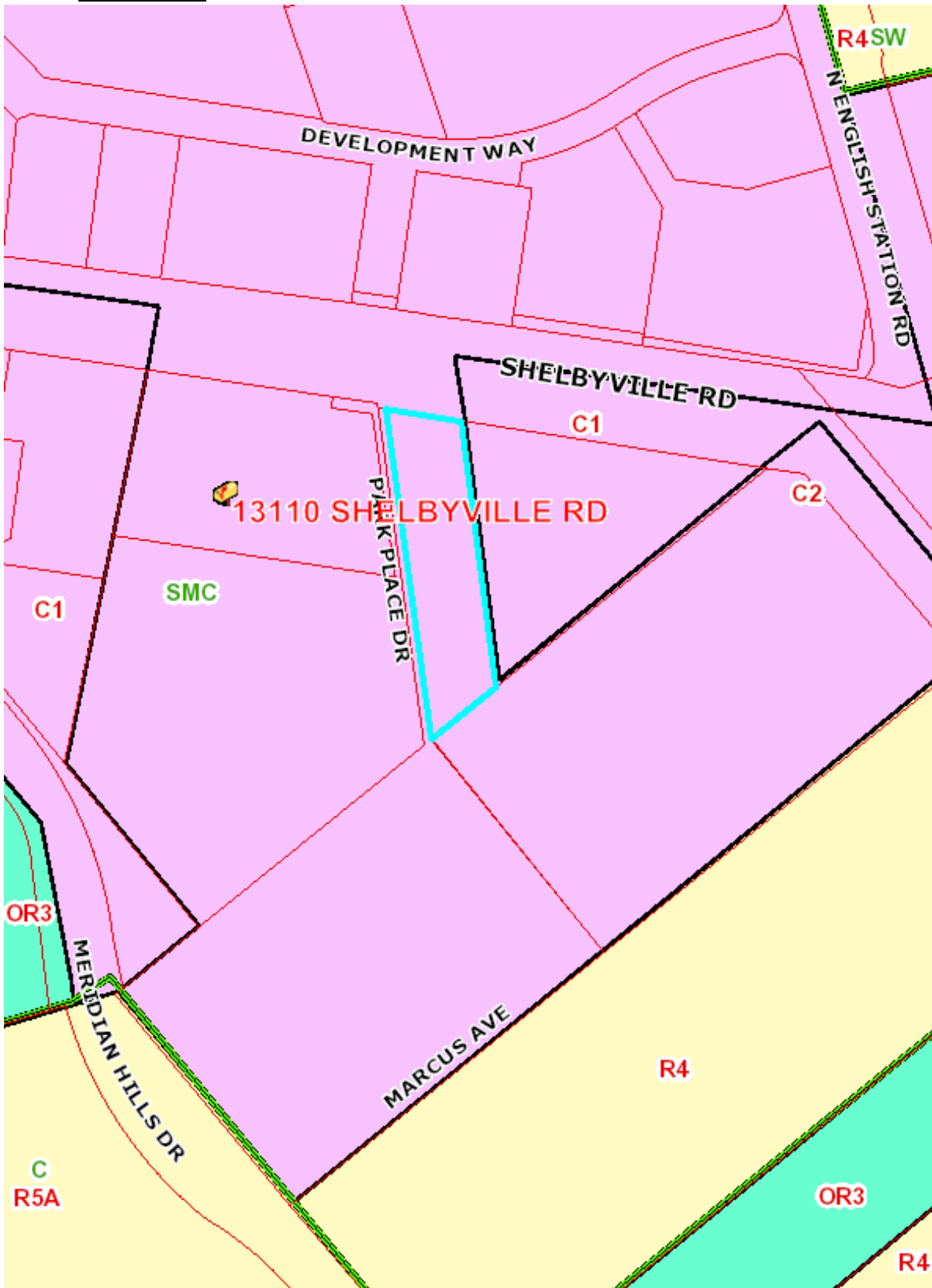
**NOTIFICATION**

Date	Purpose of Notice	Recipients
10/26/17	Hearing before LD&T	1 <sup>st</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 19

## **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

1. Zoning Map



2. Aerial Photograph





### **3. Existing Binding Elements**

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. No further development shall occur without prior approval from the Planning Commission and the City of Middletown, except for land uses permitted in the established zoning district.
2. Use of the subject site shall be limited to a drive-in restaurant. There shall be no other use of the property unless approved by the LD&T Committee and the City of Middletown. Notice of a request to amend this binding element shall be given in accordance with Planning Commission policy.
3. The development shall not exceed 1,362 square feet of gross floor area.
4. The only permitted freestanding sign shall be located as shown on the approved development plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 5 feet to the front property line. The sign shall not exceed 72 square feet in area per side and 16 feet in height. No sign shall have more than two sides. Such sign shall also comply with all applicable City of Middletown ordinances.
5. The size and location of any proposed sign must be approved by the City of Middletown. The City of Middletown may require that the signs be smaller than would otherwise be permitted by the Zoning District Regulations.
6. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants, advertising balloons, or banners shall be permitted on the site.
7. There shall be no outdoor storage on the site.
8. The hours of operation shall be from 10:00am to 11:00pm Sunday-Thursday, and 10:00 a.m. to 12:00 a.m. on Friday and Saturday.
9. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90 degree cutoff so that no light source is visible off-site.
10. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
  - a. The construction plan must receive full construction approval from the Jefferson County Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - c. An access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be secured from the adjoining property owner and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of

approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

11. If a building permit is not issued within one year of the date of approval of the plan, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission and the City of Middletown.
12. A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission, and the City of Middletown.
13. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system permitted on the site audible beyond the property line.
14. The property owner/developer shall provide copies of these binding elements to tenants, contractors and other parties engaged in development of this project, and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.
15. The above binding elements may be amended as provided for in the Zoning District Regulations, upon approval of the City of Middletown.

#### 4. **Proposed Binding Elements**

2. Use of the subject site shall be limited to a ~~drive-in restaurant~~ **automobile repair garage**. There shall be no other use of the property unless approved by the LD&T Committee and the City of Middletown. Notice of a request to amend this binding element shall be given in accordance with Planning Commission policy.
3. ~~The development shall not exceed 1,362 square feet of gross floor area.~~
8. The hours of operation shall be from ~~10:00am to 11:00pm Sunday Thursday, and 10:00 a.m. to 12:00 a.m. on Friday and Saturday.~~ **8:00am to 7:00 pm, Monday-Friday; Saturday and Sunday 8:00am to 6:00pm.**